IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6366 OF 2006

M/s.M.K.Sansar Restaurant & Bar
(Commander) Prop. Mr.Mukhtar
Ahmed Kallankhan ..Petitioner

Vs.

1. The State of Maharashtra & Ors. ..Respondents

Mr.M.N.Dhamal for the petitioner

Mr.S.K.Chindralikar, A.G.P. for the state

CORAM : A.P.DESHPANDE, J

DATED : 14TH NOVEMBER, 2006

P.C.:

1. The respondent bank has obtained two certificates under section 101 of the Maharashtra Co-operative Societies Act, 1961; one in the sum of Rs.15,15,427/- and the other for a sum of Rs.13,05,254/-. The certificates are obtained in the year 2003. The respondent bank by a notice dt.25.7.06 informed the petitioner that the bank has published an advertisement in the local newspaper dt.22.7.06 for sale of the attached immovable property which is described as 'hotel

premises', by public auction. It was then stated in the communication that if Prakash Shetty is willing to purchase the petitioner's hotel then the prospective buyer needs to pay all the dues of the bank and on receipt of entire dues, the attached property will be released in favour of the petitioner. It was also suggested that the prospective buyer could be asked to attend the auction. It was also informed that failing to comply with the suggestions made in the communication, the bank will be constrained to sell the property to the highest bidder in auction. The said notice was received by the petitioner and acknowledgment has been placed on record. As the petitioner failed to clear all the dues, the property was put to auction and is sold to the highest bidder for a consideration of Rs.52 lacs on 21.8.06. The petitioner then moved an application / objection before the Special Recovery Officer on 16.9.06 requiring the bank to furnish the exact amount due and payable by the petitioner and also sought time to make the payment. As the petitioner had not deposited the amount as is required by Rule 107 (13) of the Maharashtra Co-operative Societies

Act, 1961, the bank has confirmed the sale in favour of the highest bidder. The action on the part of the Recovery officer in proceeding to sell the property for recovery of the dues is called in question by filing this writ petition.

2. The learned counsel for the petitioner in the first place submitted that if the property is placed in possession of the petitioner, he would sell a part of it and would be then in a position to deposit the dues of the bank. The petitioner urges that three months time be granted so as to enable the petitioner to clear the dues.

3. The learned counsel for the petitioner brings it to my notice that till date the sale certificate has not been issued and the said fact is not disputed by the learned counsel for the respondent bank. The learned counsel for the respondent bank states that the sale certificate has not been issued in view of the pendency of this writ petition in the High Court.

4. Under the scheme of 107 of the Rules, it is

not possible to accede to the said request made by the learned counsel for the petitioner. I do not find any illegality in the auction sale of the immovable property of the petitioner. There being no merits in the petition, petition is summarily rejected.

(SHRI A.P.DESHPANDE, J)